

**DEPARTMENT OF STATE REVENUE**  
**Revenue Ruling #2009-11 ST**  
**September 4, 2009**

**NOTICE:** Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

Sales and Use Tax – Manufactured Residential Structures

A company ("Taxpayer") is seeking an opinion as to the taxability of its product with regard to Indiana sales and use tax. Specifically, Taxpayer seeks a ruling as to the taxability of the materials which Taxpayer purchases and incorporates into its product and the sales of its product both within Indiana and in other jurisdictions.

Authority: [IC 6-2.5-2-1](#); [IC 6-2.5-3-2\(a\)](#); [IC 6-2.5-3-4](#); [IC 6-2.5-4-9](#); [IC 6-2.5-5-6](#); [IC 6-2.5-5-29\(c\)](#); [45 IAC 2.2-3-7](#); [45 IAC 2.2-3-8](#); [45 IAC 2.2-3-9\(d\)\(1\)](#); [45 IAC 2.2-3-9\(e\)\(3\)](#).

**STATEMENT OF FACTS**

Taxpayer provides the following facts regarding its request for a revenue ruling. Taxpayer, which is not currently located in Indiana, manufactures residential structures, some of the components for which are manufactured on Taxpayer's premises and then shipped to and assembled on a client's building site. In particular, Taxpayer explains his business operations thusly:

[Taxpayer] creates manufactured components, which are a combination of precision stamped steel, fibrous cement panels and a polystyrene core. The components are assembled into building blocks (largest being 4 feet by 4 feet). The blocks and everything that is necessary to complete the home goes into two shipping containers sent to [job sites] throughout the world.

These are site built structures, similar in every way to wood framing, except the blocks are stacked to [build] the walls and roof. Once the blocks are stacked, then structural cable is brought through all roof and wall blocks to insure they are locked in place, then cement and steel or fiberglass rebar is added.

The building system is used primarily for the replacement of homes destroyed by a natural disaster... [t]he product can be used by any type of construction and go up to four [floors] in height without adding any additional [structural] steel.

Taxpayer would like to expand its business operations to Indiana. However, Taxpayer first seeks a ruling as to the taxability of its product with regard to Indiana sales and use tax. Specifically, Taxpayer seeks a ruling as to the taxability of the materials which Taxpayer purchases and incorporates into its product and the sales of its product both within Indiana and in other jurisdictions.

**DISCUSSION**

In general, sales tax is imposed on retail transactions made in Indiana. [IC 6-2.5-2-1](#). Correspondingly, [IC 6-2.5-3-2\(a\)](#) imposes use tax on the storage, use or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction, regardless of the location of that transaction. However, the storage, use, and consumption of tangible personal property in Indiana are exempt from the use tax if either the sales tax has already been paid on the acquisition of the property or the property was acquired in a transaction that is exempt from sales tax and the property is being used, stored, or consumed for the purpose for which it was exempted. [IC 6-2.5-3-4](#).

Taxpayer's business operations represent two separate transactions that are potentially subject to Indiana sales and use tax: (1) Taxpayer's purchases of materials from a third party and (2) Taxpayer's clients' purchases of Taxpayer's product.

Regarding Taxpayer's purchases, [IC 6-2.5-5-6](#) provides the following exemption from Indiana sales tax:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for incorporation as a material part of other tangible personal property which the purchaser manufactures, assembles, refines, or processes for sale in his business.

Taxpayer's purchases of materials that are incorporated into other tangible personal property that Taxpayer

manufactures or produces for sale are exempt from Indiana sales tax. If the tangible personal property manufactured by Taxpayer is, in turn, sold to an end user in another state who does not use the item in Indiana, then it is also exempt from Indiana use tax.

The purchases of Taxpayer's product by its clients are somewhat different. Sales of Taxpayer's product that are delivered to and used by Taxpayer's clients in other states are not subject to Indiana sales or use tax. Tax in a destination state may still be applicable, but the sales would not be subject to Indiana sales or use tax. However, if Taxpayer sells its product to Indiana residents for use in this state, then those sales are subject to Indiana sales and use tax. Unless such purchasers present valid exemption certificates (which recognize a statutory exemption regarding such transactions), Taxpayer would be required to collect sales tax on such transactions.

While the sales of real property are generally not taxable, sales and use tax does apply to tangible personal property that is incorporated into and sold as part of real property. [45 IAC 2.2-3-8](#) states:

(a) In general, all sales of tangible personal property are taxable, and all sales of real property are not taxable. **The conversion of tangible personal property into realty does not relieve the taxpayer from a liability for any owing and unpaid state gross retail tax or use tax with respect to such tangible personal property.**

(b) All construction material purchased by a contractor is taxable either at the time of purchase, or if purchased exempt (or otherwise acquired exempt) upon disposition unless the ultimate recipient could have purchased it exempt. (**Emphasis added.**)

[45 IAC 2.2-3-7](#), in relevant part, provides a definition of a "contractor":

(a) Contractors. For purposes of this regulation [[45 IAC 2.2](#)] "contractor" means any person engaged in converting construction material into realty. The term "contractor" refers to general or prime contractors, subcontractors, and specialty contractors, including but not limited to persons engaged in building, cement work, carpentry, plumbing, heating, electrical work, roofing, wrecking, excavating, plastering, tile and road construction.

(b) Construction material. For purposes of this regulation [[45 IAC 2.2](#)], "construction material" means any tangible personal property to be used for incorporation in or improvement of a facility or structure constituting or becoming part of the land on which such facility or structure is situated.

How sales and use tax are applied to construction contractors depends on the nature of the contract between the contractor and the purchaser. [45 IAC 2.2-3-9\(e\)\(3\)](#) states that when a construction contractor, performing work pursuant to a lump-sum contract, acquires tangible personal property in an exempt transaction and subsequently converts the construction material into realty on land he does not own, he must remit use tax based on the purchase price of the materials. In a slightly different manner, [45 IAC 2.2-3-9\(d\)\(1\)](#) states that when a construction contractor, performing work pursuant to a time and material contract, converts construction material into realty on land he does not own, he must collect sales tax based on the gross proceeds from the sale of the construction materials. Pursuant to the authority above, when the tangible personal property manufactured by Taxpayer is sold to Indiana residents for use in this state, then those sales are subject to Indiana sales and use tax. Unless purchasers present valid exemption certificates (which recognize a statutory exemption regarding such transactions), Taxpayer, operating pursuant to a lump-sum contract, would be required to remit use tax on the purchase price of the construction materials. If Taxpayer operates pursuant to a time and material contract, Taxpayer is required to collect sales tax on the gross proceeds from the sale of the construction materials.

### RULING

Taxpayer's purchases of materials that are incorporated into other tangible personal property that Taxpayer manufactures or produces for sale are exempt from Indiana sales tax.

If the tangible personal property manufactured by Taxpayer is, in turn, sold to an end user in another state who does not use the item in Indiana, then it is also exempt from Indiana use tax.

If the tangible personal property manufactured by Taxpayer is sold to Indiana residents for use in this state, then those sales are subject to Indiana sales and use tax. Unless purchasers present valid exemption certificates (which recognize a statutory exemption regarding such transactions), Taxpayer, operating pursuant to a lump-sum contract, would be required to remit use tax on the purchase price of the construction materials incorporated into realty. If Taxpayer operates pursuant to a time and material contract, Taxpayer is required to collect sales tax on the gross proceeds from the sale of the construction materials.

### CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

**Department of State Revenue**

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